IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO. 2062 OF 1999

Ramesh S. Shah. ...Petitioner.
Vs.
N. T. C. (S.M.) Ltd. & Ors. ...Respondents.
....
Mr. P. M. Patel for the Petitioner.
Ms. Nandini Menon for Respondent Nos.2 and 3.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

January 27, 2005.

P.C.:

The Petitioner was employed as a clerk in the Kohinoor Mills Co.Ltd. On 18th January 1982, a strike took place in the Cotton Textile Industry including the aforesaid Mills. According to the Petitioner, he offered himself for work and did not participate in the strike despite which he was neither assigned work, nor paid salary. The Petitioner filed an application under Section 33C(2) of the Industrial Disputes Act, 1947 wherein he had claimed salary for the period 1st October 1983 to 31st December 1989. The Third Respondent which is the National Textile Corporation (North

Maharashtra) Ltd., filed a Written Statement denying the claim on merits. Evidence was thereafter adduced and the Labour Court allowed the claim of the Petitioner. The Assistant Commissioner of Labour issued a recovery certificate certifying the amount which is due and payable. The Petitioner filed a Writ Petition before this Court being Writ Petition No.1748 of 1996 seeking a Writ of Mandamus against the Collector to recover the dues. By an order dated 9th September 1996, this Court disposed of the Petition, directing NTC to pay to the Petitioner an amount of Rs.95,228/- within a period of six months together with interest at the rate of 6% p.a. from the date of the issuance of the recovery certificate till payment.

2. On 28th March 1990, the Petitioner had filed a complaint (ULP) 299 of 1990 under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The First and Second Respondent contested the claim on merits and contended that there as a termination of service upon the refusal to assign work and that the

Petitioner was not their employee. By an order dated 29th September 1995, the Industrial Court held that the Petitioner had duly reported for work but directed NTC to pay compensation at the rate of 25% of the back wages from the date of the filing of the complaint till the date of the order and to pay the dues of the Petitioner on the basis of a Voluntary Retirement Scheme at the rate of 40 days' salary for each calendar year. The order proceeded on the basis that the Advocate for the Petitioner had given a concession. The grievance of the Petitioner was that no such concession was in fact, made and accordingly, Miscellaneous Application (ULP) 19 of 1997 for review of the order came to be filed. The application for review was dismissed by the Industrial Court on 14th July 1998.

3. The Industrial Court by a common judgment and order dated 29th September 1995 disposed of a batch of complaints filed under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, by which the Respondent was directed to calculate and pay legal dues

on the principal of the Voluntary Retirement Scheme on the basis of 40 days' salary for each calendar year to the complainant-workmen. 25% back wages came to be awarded to the complainant from the date of the institution of the complaint till the date of the order. Gratuity was directed to be paid to the complainants. The order of the Industrial Court in one of those complaints, Complaint (ULP) 217 of 1990 was challenged before this Court in Writ Petition No.970 of 1996 (Madhukar B. Narkar & Ors. Vs. National Textile Corporation (South Maharashtra) Ltd. By an order dated 29th July 1997, the Writ Petition was partly allowed. The orders passed by the Industrial Court on 29th September 1995 and 15th April 1996 were quashed and set aside and the Court was directed to hear the complaint afresh in accordance with law in the light of the observations made in the judgment. There is no factual dispute between the Learned Counsel of the position that the aforesaid order was not challenged any further by the National Textile Corporation. Upon remand, an order was passed by the Industrial Court. Both the Counsel are agreed in stating that this petition would be covered by the judgment dated 29th April 1997 of

Mr.Justice R.M. Lodha in Writ Petition No.970 of 1996. A similar order was passed by a Learned Single Judge in Writ Petition No.42 of 1998 (P.T. Bhagat vs. N. T. C. (S. M.) Ltd. & Ors.). In the circumstances, this Petition shall stand disposed of in terms of the judgment dated 29th July 1997 delivered by the Learned Single Judge in Writ Petition No.970 of 1996. Complaint (ULP) 299 of 1990 filed by the Petitioner shall accordingly stand restored to the file of the Industrial Court and shall be heard and disposed of in the light of the observations contained in the judgment of this Court dated 29th July 1997. In the circumstances, in order to facilitate a fresh determination by the Industrial Court, the orders dated 29th September 1995 and 14th July 1998 in Miscellaneous Application (ULP) 19 of 1997 are quashed and set aside. All the rights and contentions of the parties are kept open to be urged upon before the Industrial Court . The Petition is disposed of with no order as to costs.

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